

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 58.1-512 and 58.1-513 of the Code of Virginia, and to amend the Code
2 of Virginia by adding a section numbered 58.1-512.1, relating to the Virginia Land Conservation
3 Incentives Act of 1999.

4 **Be it enacted by the General Assembly of Virginia:**

5 **1. That §§ 58.1-512 and 58.1-513 of the Code of Virginia are amended and reenacted, and that the**
6 **Code of Virginia is amended by adding a section numbered 58.1-512.1 as follows:**

7 § 58.1-512. Land preservation tax credits for individuals and corporations.

8 A. For taxable years beginning on or after January 1, 2000, there shall be allowed as a credit
9 against the tax liability imposed by §§ 58.1-320 and 58.1-400, an aggregate amount equal to the lesser of
10 \$600,000 or 50-percent% of the fair market value of any land or interest in land located in Virginia
11 which is conveyed for the purpose of agricultural and forestal use, open space, natural resource, and/or
12 biodiversity conservation, or land, agricultural, watershed and/or historic preservation, as an
13 unconditional donation in perpetuity by the landowner/taxpayer to a public or private conservation
14 agency eligible to hold such land and interests therein for conservation or preservation purposes.

15 The maximum annual amount of credit that may be claimed under this article for such
16 conveyances shall be as provided in subdivision C 1.

17 B. The fair market value of qualified donations made under this section shall be substantiated by
18 a "qualified appraisal" prepared by a "qualified appraiser," as those terms are defined under applicable
19 federal law and regulations governing charitable contributions. The value of the donated interest in land
20 that qualifies for credit under this section, as determined according to appropriate federal law and
21 regulations, shall be subject to the limits established by U.S. Internal Revenue Code § 170 (e). In order
22 to qualify for a tax credit under this section, the qualified appraisal shall be signed by the qualified
23 appraiser, who must be licensed in the Commonwealth of Virginia as provided in § 54.1-2011, and a
24 copy of the appraisal shall be submitted to the Department. In the event that any appraiser falsely or

25 fraudulently overstates the value of the contributed property in an appraisal that the appraiser has signed,
 26 the Department may disallow further appraisals signed by the appraiser and shall refer the appraiser to
 27 the Real Estate Appraiser Board for appropriate disciplinary action pursuant to § 54.1-2013, which may
 28 include, but need not be limited to, revocation of the appraiser's license. Any appraisal that, upon audit
 29 by the Department, is determined to be false or fraudulent, may be disregarded by the Department in
 30 determining the fair market value of the property and the amount of tax credit to be allowed under this
 31 section.

32 In addition, no credit shall be allowed for the conveyance of a fee interest, or a less-than-fee
 33 interest, in real property made on or after January 1, 2007, unless, as provided in § 58.1-512.1, the
 34 property or interest conveyed has been (i) certified by a licensed reviewer to be in compliance with
 35 standards adopted by the Department pursuant to such section, and (ii) registered with the Department
 36 prior to any credit being claimed or transferred by a taxpayer.

37 C. 1. The amount of the credit that may be claimed by ~~a taxpayer~~ each taxpayer, including credit
 38 claimed by applying unused credits as provided under subsection C of § 58.1-513, shall not exceed
 39 \$50,000 for 2000 taxable years, \$75,000 for 2001 taxable years, and \$100,000 for 2002 taxable years
 40 and thereafter. In addition, for each taxpayer, in any one taxable year the credit used may not exceed the
 41 amount of individual, fiduciary or corporate income tax otherwise due. Any portion of the credit which
 42 is unused in any one taxable year may be carried over for a maximum of five consecutive taxable years
 43 following the taxable year in which the credit originated until fully expended.

44 2. Qualified donations shall include the conveyance in perpetuity of a fee interest in real property
 45 or a less-than-fee interest in real property, such as a conservation restriction, preservation restriction,
 46 agricultural preservation restriction, or watershed preservation restriction, provided that such less-than-
 47 fee interest qualifies as a charitable deduction under § 170 (h) of the U.S. Internal Revenue Code of
 48 1986, as amended. ~~Qualified donations shall not include the conveyance of a fee interest, or a less-than-~~
 49 ~~fee interest, in real property that has been dedicated for the purpose of fulfilling density requirements to~~
 50 ~~obtain approvals for zoning, subdivision, site plan, or building permits.~~

51 3. In addition, if credit under this article is allowed for a portion of a recorded parcel of land, no
52 credit shall be allowed for any other portion of such parcel until at least 15 years have elapsed from the
53 time of donation. This prohibition shall not apply if (i) all owners of the parcel who have been allowed
54 credit for a qualified donation are not affiliated with the person or entity seeking credit for a different
55 portion of the parcel and (ii) in the case of an individual seeking credit, the individual has not previously
56 made a qualified donation for any portion of the parcel and is not an immediate family member of any
57 such owners.

58 Pursuant to the criteria set forth in this subdivision, the Department shall establish and make
59 publicly available guidelines that describe the property and the circumstances under which donations of
60 such property shall not be qualified donations. The Department shall update the guidelines as necessary
61 as determined by the Tax Commissioner. Such guidelines shall be exempt from the Administrative
62 Process Act (§ 2.2-4000 et seq.).

63 34. Qualified donations shall be eligible for the tax credit herein described if such donations are
64 made to the Commonwealth of Virginia, an instrumentality thereof, or a charitable organization
65 described in § 501 (c) (3) of the U.S. Internal Revenue Code of 1986, as amended, if such charitable
66 organization (i) meets the requirements of § 509 (a) (2) or (ii) meets the requirements of § 509 (a) (3)
67 and is controlled by an organization described in § 509 (a) (2).

68 45. The preservation, agricultural preservation, historic preservation or similar use and purpose
69 of such property shall be assured in perpetuity.

70 § 58.1-512.1. Required registration and certifications of credits; standards of review; licensing of
71 credit reviewers.

72 A. No credit shall be allowed for the conveyance of a fee interest, or a less-than-fee interest, in
73 real property made on or after January 1, 2007, unless the property or interest conveyed has been
74 registered with the Department prior to any credit being claimed or transferred by a taxpayer. The
75 Department shall prescribe the procedures and forms for such registration process.

76 B. The registration described in subsection A shall require a written certification by a licensed
77 reviewer that the property, or interest therein, is in compliance with pre-registration standards

78 promulgated by the Department, which standards shall be based upon the guidelines set forth in
79 subsection C.

80 Pre-registration standards shall be updated by the Department as deemed necessary by the
81 Commissioner. A certification by a licensed reviewer that the property to be conveyed (or interest
82 therein) is in compliance with the Department's standards as required in this subsection shall not
83 preclude the Department from contesting a credit claim under this article and disallowing the credits in
84 whole or in part.

85 C. The Department shall promulgate pre-registration standards including but not limited to
86 standards that incorporate the following guidelines:

87 1. Any donation upon which credits are to be based shall provide significant public benefit. The
88 property that is the subject of the donation shall have important conservation values; the donation shall
89 be made to an appropriate donee with a commitment to preserving in perpetuity the conservation values
90 of the property that is the subject of the donation; and if the donation is a partial interest such as a
91 conservation or open-space easement, the terms of the donation shall provide an appropriate level of
92 protection for the conservation values of the subject property. The Department's pre-registration
93 standards shall incorporate, as applicable (without limitation), requirements under the Open-Space Land
94 Act (§ 10.1-1700 et seq.), the Virginia Conservation Easement Act (§ 10.1-1009 et seq.), and § 170 (h)
95 of the Internal Revenue Code.

96 2. The appraisal estimating the value of any donation upon which credits are to be based must
97 employ proper methodology and be appropriately supported by market evidence. The Department's pre-
98 registration standards shall incorporate, as applicable (without limitation), requirements under U.S.
99 Internal Revenue Code § 170 (h), the Uniform Standards of Professional Appraisal Practice (USPAP),
100 and the United States Department of Justice, Uniform Appraisal Standards For Federal Land
101 Acquisitions.

102 D. The Department shall establish the application procedures and the qualifications required for
103 persons and entities seeking to provide the certification service described under this section, provided
104 that all qualifications shall be necessary to ensure either competence or integrity of licensed reviewers.

105 The application procedures shall require applicants to provide documentation establishing a minimum
106 level of expertise in the evaluation of land preservation tax credit claims. The Department is hereby
107 authorized to license qualified applicants as licensed reviewers for the purposes described in this section.
108 Any person or entity licensed by the Department shall only use the pre-registration standards
109 promulgated by the Department in its review of any property or property interest.

110 E. The Department may levy and collect fees for licensure that are sufficient to cover all direct
111 expenses for the administration of the registration program described in this section.

112 F. The Commissioner may revoke or suspend the license of reviewers that repeatedly certify
113 conveyances for which credits are subsequently disallowed in whole or in part by the Department.
114 Licensed reviewers also shall be subject to regular examination by the Department.

115 G. The Department shall keep a current list of licensed reviewers on its Internet Web site.

116 H. Any person or entity that is denied licensure by the Department or whose license is revoked or
117 suspended shall be entitled to a review of such action. Appeals from such actions shall be in accordance
118 with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

119 I. The Department shall implement a limited fee-based appeal process by which prospective
120 credit claimants repeatedly rejected by licensed reviewers may seek to register with the Department
121 notwithstanding the lack of a written certification from a licensed reviewer.

122 J. Except as provided in subsection H, the pre-registration standards and procedures and forms
123 described under this section shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

124 § 58.1-513. Limitations; transfer of credit; gain or loss from tax credit.

125 A. Any taxpayer claiming a tax credit under this article shall not claim a credit under any similar
126 Virginia law for costs related to the same project. To the extent a credit is taken in accordance with this
127 article, no subtraction allowed for the gain on the sale of (i) land dedicated to open-space use or (ii) an
128 easement dedicated to open-space use under subsection C of § 58.1-322 shall be allowed for three years
129 following the year in which the credit is taken.

130 B. Any tax credits that arise under this article from the donation of land or an interest in land
131 made by a pass-through tax entity such as a trust, estate, partnership, limited liability company or

132 partnership, limited partnership, subchapter S corporation or other fiduciary shall be used either by such
133 entity if it is the taxpayer on behalf of such entity or by the member, manager, partner, shareholder or
134 beneficiary, as the case may be, in proportion to their interest in such entity in the event that income,
135 deductions and tax liability pass through such entity to such member, manager, partner, shareholder or
136 beneficiary or as set forth in the agreement of said entity. Such tax credits shall not be claimed by both
137 the entity and the member, manager, partner, shareholder or beneficiary for the same donation.

138 C. Any taxpayer holding a credit under this article may transfer unused but otherwise allowable
139 credit for use by another taxpayer on Virginia income tax returns. A taxpayer who transfers any amount
140 of credit under this article shall file a notification of such transfer to the Department in accordance with
141 procedures and forms prescribed by the Tax Commissioner.

142 For purposes of this article, the aggregate amount of unused but otherwise allowable credit that
143 may be transferred and claimed as credit by all taxpayers for any qualified donation means (i) the lesser
144 of \$600,000 or 50% of the qualified donation minus (ii) the amount claimed as credit by the taxpayer
145 who made such qualified donation.

146 D. To the extent included in and not otherwise subtracted from federal adjusted gross income
147 pursuant to § 58.1-322 or federal taxable income pursuant to § 58.1-402, there shall be subtracted any
148 amount of gain or income recognized by a taxpayer on the application of a tax credit under this article
149 against a Virginia income tax liability.

150 E. The transfer of the credit and its application against a tax liability shall not create gain or loss
151 for the transferor or the transferee of such credit.

152 F. A pass-through tax entity, such as a partnership, limited liability company or Subchapter S
153 corporation, may appoint a tax matters representative, who shall be a general partner, member/manager
154 or shareholder, and register that representative with the Tax Commissioner. The Tax Commissioner
155 shall be entitled to deal with the tax matters representative as representative of the taxpayers to whom
156 credits have been allocated or transferred by the entity under this article with respect to those credits. In
157 the event a pass-through tax entity allocates or transfers tax credits arising under this article to its
158 partners, members or shareholders and the allocated or transferred credits shall be disallowed, in whole

159 or in part, such that an assessment of additional tax against a taxpayer shall be made, the Tax
160 Commissioner shall first make written demand for payment of any additional tax, together with interest
161 and penalties, from the tax matters representative. In the event such payment demand is not satisfied, the
162 Tax Commissioner shall proceed to collection against the taxpayers in accordance with the provisions of
163 Chapter 18 (§ 58.1-1800 et seq.) of this title.

164 **2. That the provisions of this act shall be applicable to any conveyance of property (or the**
165 **conveyance of any interest in property) under the Virginia Land Conservation Incentives Act of**
166 **1999 that is made on or after July 1, 2006, except that (i) the amendments to subdivision C 1 of §**
167 **58.1-512 shall be applicable for taxable years beginning on or after January 1, 2006, and (ii) the**
168 **provisions of § 58.1-512.1 shall be applicable to conveyances made on or after January 1, 2007.**

169 **3. That the pre-registration standards and procedures and forms for the registration process**
170 **described under § 58.1-512.1 and the guidelines required under subdivision C 3 of § 58.1-512**
171 **pursuant to the provisions of this act shall first be made publicly available no later than October**
172 **1, 2006.**

173 #